

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
INSPIRE, LLP

Applicant

Sandra Ventura

Joanne Carey-Vert

Paul Sill

Monty Rahman

For the Application

Rachel D. Breza, Esquire

Scott M. Breza, Esquire

Andrew Winick, Esquire

Attorneys for the Applicant

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OZAH Case No. CU 18-09

Before: Martin L. Grossman, Hearing Examiner
Director, Office of Zoning and Administrative Hearings

**OPINION AND ORDER ADMINISTRATIVELY APPROVING A MINOR
AMENDMENT TO CONDITIONAL USE CU 18-09**

I. Background

Conditional Use CU 18-09 was granted by the Hearing Examiner on October 12, 2018, to permit the Applicant, Inspire, LLP, to operate a Private Educational Institution in the existing two-story building at 4343 Sandy Spring Road, Burtonsville, Maryland 20866. The Subject Site, consisting of approximately 2.859 acres, is Parcel 277 on Tax Map LS11, and is described as part of Snowden's Manor Enlarged Subdivision. It is zoned R-200 and is subject to the *1997 Fairland Master Plan*. A conditional use is required for an Educational Institution (Private) in the R-200 Zone.

The property is owned by the Silver Spring Lodge No. 658 Loyal Order to Moose, Inc., with a Tax ID No. 05-00254623 (Exhibit 6). As described by the Applicant, in its Pre-Hearing Statement (Exhibit 67, p. 3), "Inspire, LLP intends to change the use from a fraternal organization into a religiously based educational organization. . . . Inspire, LLP has been serving

the community for over 16 years as a Christian based organization with a broad mission of service to all people regardless of denomination.”

The Office of Zoning and Administrative Hearings (OZAH) scheduled a public hearing to be held on September 28, 2018, and issued notice on August 16, 2018 (Exhibit 63). The Technical Staff of the Montgomery County Planning Department issued a report on August 24, 2018, recommending approval of the application, subject to ten conditions. Exhibit 69. The Planning Board met on September 6, 2018, and voted unanimously (4-0) to recommend approval with the conditions recommended by Staff, but with changes to two of the recommended conditions. These recommendations are contained in the Chair’s letter of September 24, 2018. Exhibit 73. No correspondence either for or against the application was received by either the Hearing Examiner or Technical Staff (Exhibit 69, p. 15).

The public hearing proceeded as scheduled on September 28, 2018, and the record closed on October 9, 2018, following receipt of the hearing transcript. There was no opposition in this case, and as set forth in his October 12, 2018 Report and Decision, the Hearing Examiner found that the proposed use met all the standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance. Based on his findings and conclusions and a thorough review of the entire record, the Hearing Examiner approved the application of Inspire, LLP (CU 18-09), for a conditional use under Section 59.3.4.5. of the Zoning Ordinance, to operate an Educational Institution (Private) in the existing two-story building at 4343 Sandy Spring Road, Burtonsville, Maryland, subject to eleven conditions listed in Part IV of his Report and Decision.

II. The Modification Request

By letter dated September 3, 2019 (Exhibit 81), Sandra Ventura, Managing Member of Inspire, LLP, requested that the Hearing Examiner approve a minor amendment of the conditional use by administratively modifying the Conditional Use Plan to move the location of

the handicapped accessible parking from the front of the building to the rear “to comply with ADA standards requiring the shortest travel distance from the accessible parking to the accessible entrance.” Exhibit 81. The Applicant’s letter indicates that the requested amendment is at the direction of “DPS Building Inspector Michael Stutts.” The Applicant’s proposed Amended Conditional Use Site Plan is labelled Exhibit 81(a)).

The Applicant paid the minor amendment fee of \$820, as required by OZAH’s Fee Schedule (10% of the prevailing fee for the Conditional Use).

III. The Governing Law

Requests to amend a conditional use are governed by Zoning Ordinance §59.7.3.1.K. Whether an amendment request is characterized as one for a major amendment or for a minor amendment is significant because a *major amendment* application must “*follow[] the same procedures, must meet the same criteria, and must satisfy the same requirements as the original conditional use application . . .*” Zoning Ordinance §59.7.3.1.K.1.b. However, an application for a *minor amendment* need not go through those extensive procedures. Rather, “. . . *it may be approved administratively by the Hearing Examiner.*” Zoning Ordinance §59.7.3.1.K.2.a.

Zoning Ordinance Section 59.7.3.1.K. also defines major and minor amendments:

§59.7.3.1.K.1.a. *A major amendment to a conditional use is one that changes the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.*

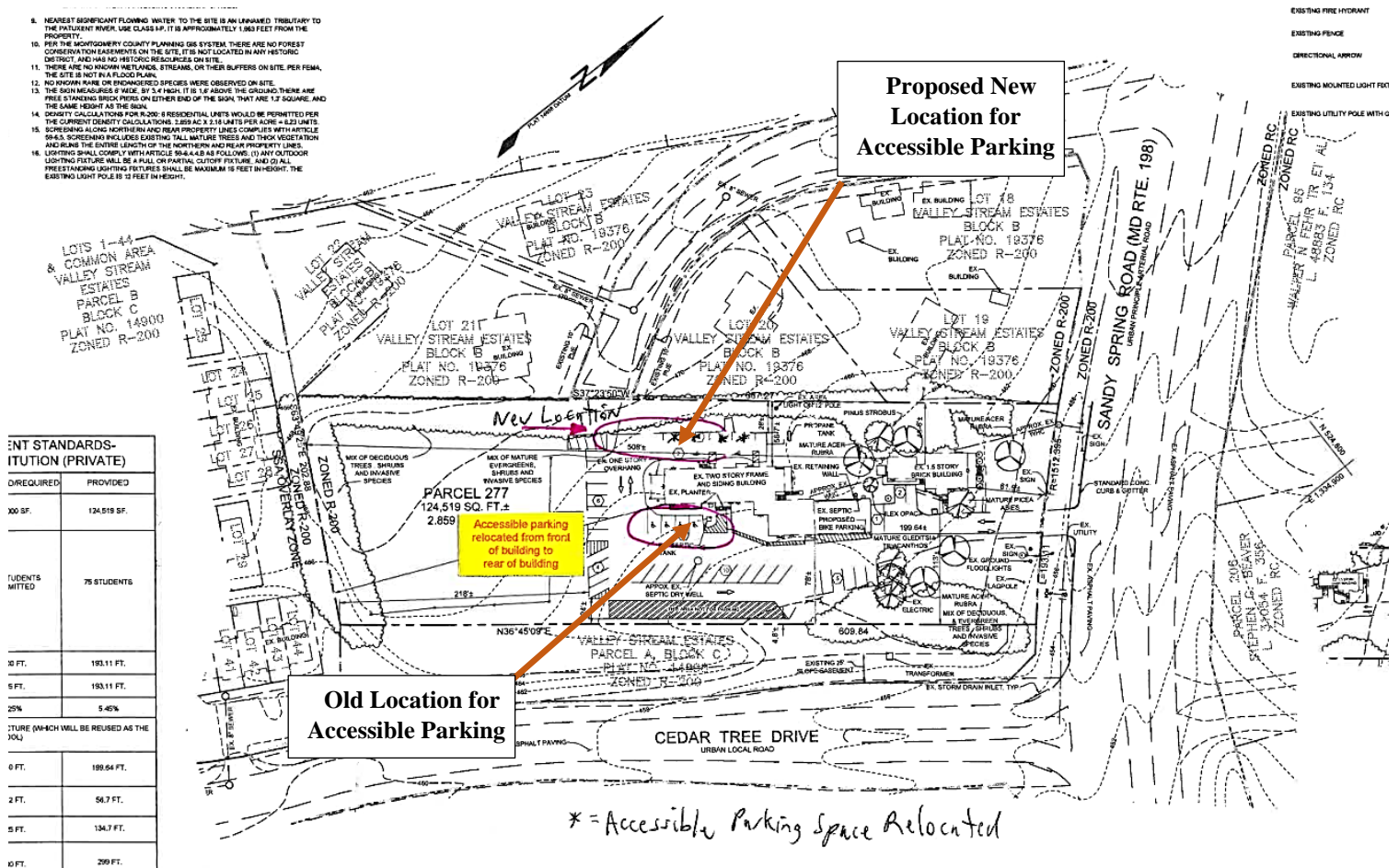
§59.7.3.1.K.2.a. *A minor amendment to a conditional use is one that does not change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.*

Whether an application to amend a conditional use is characterized as a major amendment or a minor amendment, the County Council has made it clear that the request to amend a conditional use must be filed with the Hearing Examiner, and not the Board of

Appeals.¹ See Zoning Text Amendment (ZTA) 16-16, (Ord. No. 18-25, eff. 2/27/17), which amended Zoning Ordinance §59.7.3.1.K. to clarify jurisdiction over applications to amend conditional uses and special exceptions. Thus, the Hearing Examiner has the jurisdiction to act on the Applicant's request for a minor amendment of the conditional use in question.

IV. Evaluation and Decision

The proposed new location for the accessible parking is shown on the amended Conditional Use Site Plan (Exhibit 81(a)), the site layout portion of which is reproduced below:



The definitional distinction between a major and minor amendment is whether the proposal, if granted, would “change the nature, character, or intensity of the conditional use to

¹ The opposite is true with requests to modify special exceptions. They must be filed with the Board of Appeals.

an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use. Under the facts of this case, the Hearing Examiner finds that the proposed change would clearly not change the nature or character of the use.

It would still be operating as an Educational Institution (Private) in the existing two-story building at 4343 Sandy Spring Road, Burtonsville, Maryland. It will still have the same number of parking spaces and the same number of employees and students. No additional traffic, parking, staffing or operational changes are requested. The only proposed change is move the accessible parking from the front of the building to the rear of the building, at the behest of the Department of Permitting Services, “to comply with ADA standards requiring the shortest travel distance from the accessible parking to the accessible entrance.” Exhibit 81. One would not reasonably expect substantial adverse effects on the surrounding neighborhood just by moving the location of the accessible parking in this fashion.

There is also no evidence in the factual record compiled by the Hearing Examiner to demonstrate that the relocation of the accessible parking would be a significant issue for the neighborhood. Based on this record, the Hearing Examiner agrees with Ms. Ventura that the relocation of the accessible parking “does not change the nature, character, or intensity of the conditional use.” Exhibit 81.

The Hearing Examiner concludes that the proposed modification is properly characterized as a minor amendment – one which will not change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use. Thus, the statutory standard for an administrative modification to allow a minor amendment

is satisfied, and it is hereby approved without a public hearing, subject to reconsideration if a request for a hearing is received in accordance with the provisions of this Order.

The Hearing Examiner hastens to add that this ruling does not address whether or not the conditional use holder must obtain any further authorization from any other agency to relocate the accessible parking. The Hearing Examiner holds only that the terms of the conditional use, as amended by this Order, do not prohibit the relocation of the accessible parking now proposed by the conditional use holder.

The filing of an Amended Conditional Use Plan (Exhibit 81(a)), requires a slight modification to the language of Conditions 7 and 8 of the Conditional Use. Those conditions will now read:

7. The 37 parking spaces shown on the Applicant's Amended Conditional Use Site Plan (Exhibit 81(a)) must be maintained.
8. Prior to the issuance of a use-and-occupancy permit, the Applicant must improve the existing parking facility as shown on the Amended Conditional Use Site Plan (Exhibit 81(a)) by marking and striping the surface parking lot to provide for orderly and safe on-site vehicular movement.

The added language has been underlined.

ORDER

Based on the foregoing, it is, this 12th day of September, 2019:

ORDERED: That the request for a minor amendment to Conditional Use CU 18-09, allowing the relocation of the accessible parking as depicted in the Amended Conditional Use Site Plan (Exhibit 81(a)), is hereby administratively **APPROVED**, under the terms of the 11 Conditions set forth in Part IV of the Hearing Examiner's Report and Decision of October 12, 2018, as modified herein; and, it is

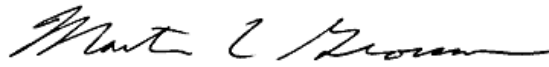
FURTHER ORDERED: That the language of Conditions 7 and 8 of the Conditional Use are hereby modified to read as follows:

7. The 37 parking spaces shown on the Applicant's Amended Conditional Use Site Plan (Exhibit 81(a)) must be maintained.
8. Prior to the issuance of a use-and-occupancy permit, the Applicant must improve the existing parking facility as shown on the Amended Conditional Use Site Plan

(Exhibit 81(a)) by marking and striping the surface parking lot to provide for orderly and safe on-site vehicular movement.

and, it is **FURTHER ORDERED:** That this amendment and the continued use of the conditional use are subject to all terms and conditions imposed in connection with the initial approval, except as specifically amended by the Hearing Examiner in this Opinion and Order. The Conditional Use holder is directed to comply fully with all applicable county, state and federal regulations; and, it is

FURTHER ORDERED: That pursuant to Section 59.7.3.1.K.2.b. of the Zoning Ordinance, any party may request a public hearing on the Hearing Examiner's action within 15 days after this decision is issued. The request for public hearing must be in writing, and must specify the reason for the request and the nature of the objection or relief desired. If a request for a hearing is received, the Hearing Examiner must suspend his administrative amendment and conduct a public hearing to consider whether the amendment substantially changes the nature, character, or intensity of the conditional use or its effect on the immediate neighborhood. If the Hearing Examiner determines that such impacts are likely, then the amendment application must be treated as a major amendment application. A decision of the Hearing Examiner may be appealed on the basis of the Hearing Examiner's record to the Board of Appeals.



Martin L. Grossman
Hearing Examiner

NOTICES TO:

Inspire, LLP, care of Sandra Ventura, Managing Partner

Rachel D. Breza, Esquire

Scott M. Breza, Esquire

Andrew Winick, Esquire

Barbara Jay, Executive Director

Montgomery County Board of Appeals

Philip Estes, Planning Department

All parties of record

Ehsan Motazed, Department of Permitting Services

Greg Nichols, Manager, SPES at DPS

Alexandre A. Espinosa, Director, Finance Department

Charles Frederick, Esquire, Associate County Attorney

Gwen Wright, Director, Planning Department

Current abutting and confronting property owners

All parties entitled to notice at the time of the original filing:

Abutting and Confronting Property Owners (or a condominium's council of unit owners or renters, if applicable)

Civic, Renters' and Homeowners' Associations within a half mile of the site

Any Municipality within a half mile of the site